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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,157	06/30/2005	Son Nguyen-Kim	13111-00023-US	6306
30678 7590 11/05/2008 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20006				
EXAMINER				
PEZZUTO, HELEN LEE				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
11/05/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,157

Applicant(s)

NGUYEN-KIM ET AL.

Examiner

Helen L. Pezzuto

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 27-31 and 36-47 is/are pending in the application.
4a) Of the above claim(s) 1-15 and 27-29 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 30, 31 and 36-47 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) 1-15, 27-31, 36-47 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendment to claim 30, and the addition of claims 36-47 filed in the response on 9/2/08 is acknowledged. Currently, claims 30-31 and 36-47 are under consideration in this application.

Election/Restrictions

1. Claims 1-15, and 27-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/19/07.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins (US-841) or Galleguillos et al. (US-

768) or Blankenburg et al. (US-074) or Morschhauser et al. (US-476) for the reasons of record.

US 5,639,841 to Jenkins discloses a polymer useful as thickeners and dispersants for aqueous systems, including cosmetic and pharmaceutical formulations (col. 9, lines 4-17). Prior art polymer is derived from 1-99.8 wt% of one or more nonionic, cationic and/or amphoteric monomers, 0-98.8 wt% of one or more monoethylenically unsaturated monomers, 0.1-98.8 wt% of one or more monoethylenically unsaturated macromonomer, 0-20 wt% of one or more polyethylenically unsaturated crosslinking monomers, and 0-25 wt% of one or more (meth)acrylates of a strong acid (see abstract). Suitable anionic, cationic monomers include (meth)acrylic acid, diethylaminoethyl methacrylate, disclosed within the scope of the instant (a) and (b) monomers. N-vinylpyrrolidone and (meth)acrylamide were disclosed within the scope of the instant amide group-containing compound (c). US-841 further teaches using the resultant polymers as dispersants and thickeners in a variety of aqueous system containing other polymers/resins, thus, meeting the additional polyelectrolyte requirement expressed in claim 31.

US 6,361,768 to Galleguillos et al. discloses a hydrophilic ampholytic polymer derived from amino and carboxyl functional monomers, nonionic hydrophilic monomers, and hydrophobic monomers, suitably used in cosmetic and pharmaceutical applications (see abstract; col. 4 lines 36-49). Suitable anionic and cationic monomers include (meth)acrylic acid, N-dimethylaminopropylacrylamide, N-dimethylaminomethyl (meth)acrylate, N-vinylimidazole, and diallyl amines (col. 4, line 64 to col. 7, line 16). Suitable hydrophilic monomers include (meth)acrylamide, N-vinylpyrrolidone, are taught within the scope of the instant (c) component (col. 7, line 27 to col. 8, line 21; Tables 1 and 2). The resultant polymer is suitably used as rheology modifiers and thickeners in various aqueous cosmetic and pharmaceutical formulations containing conventional additives, including silicone cationic polymers (col. 13, line 66 to col. 14, line 65; col. 18, line 27 to col. 20, line 25).

US 6,403,074 B1 to Blankenburg et al. discloses a water-soluble or water-dispersible polymer produced by polymerizing mixtures of ethylenically unsaturated monomers

in the presence of polyalkylene oxide-containing silicone derivatives (see abstract). The preferred ethylenically unsaturated monomers are defined by formula I (col. 2, lines 41-61), including (meth)acrylic acid and its salts, esters and amides, N,N-dialkylaminoalkyl (meth)acrylates and (meth)acrylamides, vinylpyrrolidone, hydroxyalkyl (meth)acrylates, alkylene glycol (meth)acrylates, disclosed within the scope of the monomers expressed in the present claims (col. 2, line 62 to col. 5, line 25). Prior art polymers are taught to have utilities in cosmetic applications containing conventional additives taught within the scope of the polyelectrolyte expressed in claim 31 (col. 6, lines 65-67; col. 8, lines 30-47).

US 6,645,476 B1 to Morschhauser et al. discloses water-soluble polymers and their use in cosmetic and pharmaceutical compositions (see abstract). Specifically, prior art polymer is prepared by polymerizing one or more polyalkylene oxide-containing macromonomer, and one or more ethylenically unsaturated monomers (col. 2, lines 17-50). Suitable ethylenically unsaturated monomers include (meth)acrylic acid, AMPS, esters of (meth)acrylic acid, N-vinylpyrrolidone, (meth)acryloylpropyltrimethyl ammonium

chloride, discloses within the scope of the instant monomers. The resultant polymer is taught to be useful in various aqueous formulation containing known additives defined within the scope of the instant additional polyelectrolyte (col. 5, lines 44 to col. 6, line 22; col. 10, lines 1-17).

Accordingly, it would have been obvious to one having ordinary skill in the art to select and use the various monomers as suggested by the prior art references to formulate an ampholytic copolymer, motivated by the reasonable expectation of success of their utility in cosmetic and pharmaceutical compositions as taught. Thus, rendering obvious the present claims.

Response to Arguments

Applicant's amendment and remarks filed on 9/2/08 have been fully considered but are not found to be persuasive. The crux of applicant's argument lie in each of the four references does not specify mixtures of cationic and anionic monomers in the recited molar ratio, and further does not describe mixtures having (a) cationic monomers, (b) anionic monomers, and (c) nonionic amide group containing monomers. The examiner disagrees. As discussed

in the preceding paragraphs, Jenkins teaches 1-99.8 wt% at least one or more nonionic, cationic, anionic monomers, and up to 99.8 wt% of one or more monoethylenically unsaturated monomers. The instant anionic and cationic monomers fall within those of prior art anionic and cationic monomers. The instant amide group containing monomer is disclosed as suitable monoethylenically unsaturated monomers (col. 3, lines 64-65). Galleguillos et al. discloses 0.05 to 20 mol% of at least one carboxy-functional group-containing monomer within the scope of the instant anionic monomer, 10-45 mole% of at least one amino group-containing monomer within the scope of the instant cationic monomer, and hydrophobic monomer. The instant amide group-containing monomer is taught within the scope of prior art cationic monomer (col. 6, line 5) and nonionic hydrophilic monomer (col. 7, lines 44-45, 48-49, col. 10, line 60). Blackenburg et al. discloses 50-99.9 wt% of ethylenically unsaturated monomers within the scope of the instant cationic, anionic and amide group-containing monomers. The instant amide group-containing monomer is clearly taught (col. 3, lines 60-61; col. 5, line 16). Morschhauser et al. teach inter alia, 0.1-99.9 mol% of one or more ethylenically unsaturated

comonomers within the scope of the instant anionic, cationic, and amide group-containing monomers. Thus, the instant copolymer is clearly taught in prior art disclosures. Accordingly, the examiner's position is maintained.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L. Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen L. Pezzuto/
Primary Examiner
Art Unit 1796

hlp

Application Number**Application/Control No.**

10/541,157

Examiner

Helen L. Pezzuto

**Applicant(s)/Patent under
Reexamination**

NGUYEN-KIM ET AL.

Art Unit

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